

Application for Commercial Credit - 30 Day Trading Account

TO - ADBRI MASONRY PTY LTD OF 85 CHRISTENSEN RD, STAPLYTON, QLD 4207 | ABN 31 009 687 521 ("the Supplier")

The Customer named below agrees, declares and acknowledges:

- (a) if this application is accepted by the Supplier, the provisions of the Terms and Conditions of Application for Commercial Credit and the Terms and Conditions of Sale (as may be amended from time to time) will be binding on the Customer;
- (b) the Customer has reviewed the Terms and Conditions of Sale; and
- (c) the provision of credit pursuant to this application may, at the Supplier's discretion, be subject to and conditional on one or more persons executing the Guarantee, Indemnity and Charge.

CUSTOMER

Are you a (tick) Sole Trader Partnership Private Co. (Pty Ltd) Public Co. (Ltd) Trust

Customer/Trust Name

Trading Name

If a Trust, name of Trustee

Registered Address

ACN ABN

Postal Address Postcode

Business Address Postcode

Telephone (Bus) () Mobile Facsimile ()

CUSTOMER CONTACT DETAILS

Purchasing Contact Email

Telephone () Mobile Facsimile ()

Accounts Payable Contact Email

Telephone () Mobile Facsimile ()

ESTIMATED MONTHLY PURCHASES \$

FULL NAMES, ADDRESSES AND OTHER DETAILS OF DIRECTORS, PARTNERS AND SOLE TRADERS

(and any person, who executes the Terms and Conditions of Application for Commercial Credit agrees to be personally bound by the terms of clause 18 of the Terms and Conditions of Application for Commercial Credit as if the clause referred to them personally)

1 Name Telephone ()

Address

Date of Birth / / Residence Own Renting Mortgage To -

Driver's Lic. Spouse Name

2 Name Telephone ()

Address

Date of Birth / / Residence Own Renting Mortgage To -

Driver's Lic. Spouse Name

FULL NAMES, ADDRESSES AND OTHER DETAILS OF DIRECTORS, PARTNERS AND SOLE TRADERS (Cont.)

(and any person who executes the Terms and Conditions of Application for Commercial Credit agrees to be personally bound by the terms of clause 18 of the Terms and Conditions of Application for Commercial Credit as if the clause referred to them personally)

3

Name Telephone ()

Address

Date of Birth / / / Residence Own Renting Mortgage To -

Driver's Lic. Spouse Name

Trade/Builder's Licence No. Type of Business Established

4

Name Telephone ()

Address

Date of Birth / / / Residence Own Renting Mortgage To -

Driver's Lic. Spouse Name

Trade/Builder's Licence No. Type of Business Established

How long have the current proprietors (shareholder(s), partners and sole traders) or directors been proprietors or directors?

Name of any Related or Subsidiary Companies or Partnerships

Are the Business Premises Owned or Leased?

Owned Leased

Would the applicant be willing to produce on request copies of their latest balance sheet and profit and loss statement for perusal?

Yes No

Have any of the applicants, directors or proprietors previously been declared bankrupt, entered into an insolvency agreement, or been involved in a company which has been insolvent, liquidated or placed into any form of external administration?

Yes No

Give Details

TRADE REFERENCES

Monthly equal to requested credit limit.

	Name Supplier	Account No.	Telephone
1	<input type="text"/>	<input type="text"/>	(<input type="text"/>) <input type="text"/>
2	<input type="text"/>	<input type="text"/>	(<input type="text"/>) <input type="text"/>
3	<input type="text"/>	<input type="text"/>	(<input type="text"/>) <input type="text"/>

TERMS AND CONDITIONS OF APPLICATION FOR COMMERCIAL CREDIT

- 1) **Terms and Conditions**
The Customer agrees the Customer will be bound by the provisions of this Credit Agreement and the T&Cs and acknowledges the Customer has received and reviewed a copy of the T&Cs.
- 2) **Grant of Credit**
2.1 The Supplier may grant, vary or withdraw credit in accordance with these T&Cs.
2.2 The Supplier may require the Customer to provide Security in a form acceptable to the Supplier as a condition for a grant of credit, a further grant of credit or continuance of a grant of credit.
- 3) **Payment Terms**
The Customer agrees to make full payment of the Supplier's invoices within 30 days after the end of the month in which the Goods and/or Services are supplied to the Customer (or such alternative period agreed by the Supplier in writing).
- 4) **Action**
If the Customer does not strictly comply with the terms of this Credit Agreement or the T&Cs, the Supplier may take immediate action to recover any money owed by the Customer to the Supplier.
- 5) **Expenses**
5.1 The Customer must pay any credit card surcharge incurred by the Supplier from time to time if the Customer makes any payment to the Supplier using a credit card.
5.2 The Customer must pay the Supplier, the full amount of any bank fees or other expenses associated with any dishonoured payments or cheques and any legal, debt recovery or other expenses directly incurred by the Supplier in relation to any action by the Supplier to exercise any right or remedy under this Credit Agreement or the T&Cs.
- 6) **Interest**
The Supplier may charge monthly compound interest on any overdue amounts owed by the Customer at a rate of 5% per annum above the Reserve Bank of Australia's cash rate target.
- 7) **Security Interest**
7.1 To secure the punctual payment of all amounts owed by the Customer to the Supplier, the Customer grants to the Supplier:
(a) a security interest (as defined under the PPSA) over all present and after-acquired property of the Customer in relation to which the Customer can be a grantor of a security interest under the PPSA, whether or not the Customer has title to the property, including but not limited to all PPSA retention of title property (as defined under section 51F of the Corporations Act); and
(b) a fixed charge over all present and after-acquired property of the Customer in relation to which the Customer cannot be a grantor of a security interest under the PPSA.
- 7.2 The Customer agrees and acknowledges the Supplier may (without limiting the Supplier's other rights under this Credit Agreement, at law or otherwise) lodge caveats over the Customer's property and take any other action to secure and enforce the Supplier's Security Interest.
- 7.3 The Security Interest will immediately become enforceable (whether or not the amounts owed by the Customer to the Supplier have become payable) if an Event of Default occurs, without the need for any demand or notice under a Document.
- 7.4 If the Supplier's security under clause 7.1 has become enforceable, the Supplier may appoint a Receiver to the Secured Property and fix the remuneration of the Receiver or exercise any power exercisable by a Receiver even if a Receiver has not been appointed.
- 7.5 The Customer agrees on demand, and irrevocably appoints the Supplier, each director and secretary of the Supplier and any Receiver (as independent and several appointments) as the Customer's agent and attorney, to execute any document (including, without limitation, any mortgage or transfer) or undertake any act, at the Customer's cost, that the Supplier considers necessary or desirable to:
(a) better secure the Supplier's Security Interest in a manner consistent with any Document; or
(b) assist in the completion, execution of, or exercise of any power under, any Document.
- 8) **Personal Property Securities**
8.1 Funds received by the Supplier or Receiver under or because of any Document may be applied first in payment of all costs and expenses of the Supplier and Receiver (including remuneration) incurred in exercising a power in connection with any Document and then monies owing to the Supplier.
8.2 The Customer:
(a) agrees with the Supplier that neither the Customer, nor the Supplier, will disclose information of the kind specified in section 275(1) of the PPSA (except in the circumstances required by sections 275(7)(b) to (e) of the PPSA);
(b) agrees that, to the extent permitted under section 115(1) of the PPSA, the following provisions of the PPSA do not apply: sections 95, 118, 121(4), 125, 130, 132(3)(d), 135, 138B(4), 142 and 143;
(c) agrees that, to the extent permitted under section 115(7) of the PPSA, the following provisions of the PPSA do not apply: sections 127, 129(2), 129(3), 132, 134(2), 135, 136(5) and 137;
(d) acknowledges that the Supplier may, at the Customer's cost, register one or more financing statements in relation to the Supplier's Security Interest or any other Security under any Document;
(e) waives, if permitted under the PPSA, the Customer's right under section 157 of the PPSA to receive notice of any verification statement relating to the registration of any financing statement or any related financing change statement; and

TERMS AND CONDITIONS OF APPLICATION FOR COMMERCIAL CREDIT

- (f) will not, without prior written notice to the Supplier, change the Customer's name or initiate any change to any documentation registered under the PPSA.

9) Release and Indemnity

- 9.1 Neither the Supplier nor any person appointed by the Supplier under any Document will be liable for any loss that the Customer suffers as a direct or indirect result of the exercise or attempted exercise of, or failure to exercise, any rights under any Document or any release or dealing with any Security.
- 9.2 The Customer will indemnify the Supplier, each member of the Supplier's Personnel and each Receiver or any other person appointed by the Supplier in relation to any losses, liabilities, expenses (including but not limited to legal expenses on a full indemnity basis) or taxes incurred in connection with the negligence or willful misconduct of the Customer or any member of the Customer's Personnel, the Customer's material breach of this Credit Agreement or Event of Default by the Customer or any member of the Customer's Personnel.

10) Default

If an Event of Default occurs, the Supplier may (without limiting the Supplier's other rights under this Credit Agreement, at law or otherwise) demand immediate payment of any money owed by the Customer, retain any money paid by the Customer, cease any further supply of Goods and/or Services to the Customer and take possession of any Goods and/or Services for which the Customer has not paid.

11) Application of Money

If the Supplier or Receiver receives money under or because of any Document, and applies the money in payment of monies owing to the Supplier, the Supplier or Receiver may apply different parts of the money received to different parts of the monies owing in the absolute discretion of the Supplier or Receiver regardless of any appropriation by the Customer.

12) Purpose

The Customer warrants that any credit provided to the Customer by the Supplier is to be applied wholly or predominantly for commercial and/or investment purposes.

13) Advice

The Customer acknowledges the Customer has had an opportunity to obtain independent legal and financial advice in relation to this Credit Agreement and the T&Cs.

14) Joint and Several

If the Customer consists of more than one person, each person will be jointly and severally bound by the terms of this Credit Agreement.

15) Warranty

The Customer warrants that all the information set out in the Customer's application for credit is true and correct and the Customer has disclosed to the Supplier all information relevant to the Customer's application for credit.

16) Notice

The Customer must immediately provide written notice to the Supplier if there is any direct or indirect change in the ownership or control of the Customer or any change to the Customer's details set out in the Customer's Application for Commercial Credit.

17) Transactions

The Customer will be liable for all transactions by the Customer's employees, contractors or agents or any person who uses the account with the Customer's authorisation or as a result of the Customer's negligence.

18) Privacy

- 18.1 The Supplier may, before, during or after the provision of credit to the Customer, give the following information about the Customer, to a credit reporting agency:

- identity particulars - name, sex, address (and previous two addresses), date of birth, name of employer, and driver's licence number;
- the Customer's application for credit - the fact that the Customer has applied for credit and the amount;
- the fact that the Supplier is a current credit provider to the Customer;
- payments which are overdue by more than 60 days, and for which debt collection action has started;
- advice that payments are no longer overdue in respect of any default;
- information that, in the opinion of the Supplier, the Customer has committed a serious credit infringement (that is, acted fraudulently or shown an intention not to comply with credit obligations); or
- dishonoured cheques - cheques drawn by the Customer for \$100 or more which have been dishonoured more than once.

for the purpose of obtaining a consumer credit report, or allowing the credit reporting agency to create or maintain a credit information file containing information, about the Customer or for any related purpose.

- 18.2 The Supplier may obtain:

- information about the Customer from a business which provides information about the commercial creditworthiness of persons; and
- a consumer credit report containing information about the Customer from a credit reporting agency, for the purpose of assessing the Customer's application for credit or a grant of any ongoing credit or for any related purpose.

- 18.3 The Supplier may, but is not obliged to, give a credit report containing information about the Customer to any person:

- who is currently a guarantor; or
- whom the Customer has indicated is considering becoming a guarantor, for the purpose of a person deciding whether to act as guarantor or keeping a guarantor informed about any guarantee or for any related purpose.

- 18.4 The Supplier may exchange information about the Customer with those credit providers and suppliers (including trade references):

- named in this application;
- named in a consumer credit report issued by a credit reporting agency; and
- of which the Supplier is, or becomes, aware, for the purpose of assessing an application for credit, notifying other credit providers (including trade references) of a default, exchanging information with other credit providers (including trade references) as to the status of credit where the Customer is in default with other credit providers (including trade references), or assessing the Customer's creditworthiness or for any related purpose.

- 18.5 The information obtained or disclosed about the Customer in accordance with this Credit Agreement may include a credit report and anything about the Customer's creditworthiness, credit standing or credit history or any related information.

19) General

- 19.1 The Customer will always strictly comply with the Supplier's claims for payment in accordance with any security of payments legislation.
- 19.2 This Credit Agreement binds the Customer both personally and as trustee of any trust of which the Customer is trustee.
- 19.3 The Supplier may set off any amounts owed by the Supplier to the Customer against any amounts due and payable by the Customer to the Supplier whether under this Credit Agreement or otherwise.
- 19.4 Any waiver of a right by the Supplier must be express and in writing and will not operate as a waiver in relation to any subsequent matter.
- 19.5 The Supplier's rights arising out of this Credit Agreement do not exclude any other rights of the Supplier.
- 19.6 The actions of any person claiming to have the Customer's authority will bind the Customer to the extent permitted by law.
- 19.7 If any provision of this Credit Agreement is unenforceable, the provision will be severed and the remaining provisions will continue to apply.
- 19.8 The Supplier may assign any rights or benefits under this Credit Agreement to any Related Bodies Corporate or to a third party credit management organisation or collection agency for the purpose of recovery any unpaid amounts.
- 19.9 Subject to clause 19.8 above, a party may only assign any rights or benefits under this Credit Agreement with the other party's prior written consent (which must not be unreasonably withheld).

- 19.10 If there is any inconsistency or ambiguity between the terms of this Credit Agreement and the terms of the T&Cs, the terms of this Credit Agreement will take precedence.

- 19.11 This Credit Agreement will be governed by the laws of, and the parties submit to the jurisdiction of the courts of, the state in which the Goods and/or Services are delivered.

20) Definitions

In this Credit Agreement:

"Administration" means any of the following, or any analogous, events:

- any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator or liquidator to the Customer or to the whole or any part of the Customer's assets, operations or business;
- any person, or agent of a person, who holds any Security takes possession of any of the Customer's property (including but not limited to seizing the Customer's property within the meaning of section 123 of the PPSA);
- a court or other authority enforces any judgment or order against the Customer for the payment of money or the recovery of any property;
- the Customer disposes of the whole or any part of the Customer's assets, operations or business other than in the ordinary course of business;
- the Customer ceases, or threatens to cease, carrying on business;
- the Customer is unable to pay the Customer's debts as the debts fall due; or
- any step is taken for the Customer to enter into any arrangement or compromise with, or assignment for the benefit of, the Customer's creditors or any class of the Customer's creditors.

"Application for Commercial Credit" means the application for commercial credit of which this Credit Agreement forms part;

"Australian Consumer Law" means the Australian Consumer Law being schedule 2 in the *Competition and Consumer Act 2010* (Cth);

"Consumer" has meaning given under the ACL and includes the supply of goods or services to an individual or business costing up to \$100,000 (or any other amount set by the ACL in future) or goods or services costing more than \$100,000 (or any other amount set by the Australian Consumer Law) or goods or services costing more than \$100,000, which are normally used for personal, domestic or household purposes but does not include an individual or business who buys:

- a good in trade or commerce:
 - for the purpose of re-supply;
 - to use them or transform them through processing, production or manufacture;
 - to repair or treat other goods or fixtures on land;
- a service in trade or commerce for commercial use,

If the definition of 'Consumer' under the Australian Consumer Law is amended, this definition is amended accordingly;

"Corporations Act" means the Corporations Act 2001 (Cth);

"Credit Agreement" means these Terms and Conditions of Application for Commercial Credit that forms part of the Application for Commercial Credit;

"Customer" means the applicant named in the Application for Commercial Credit of which this Credit Agreement forms part;

"Document" means the Application for Commercial Credit, this Credit Agreement, the T&Cs and any document contemplated by such documents;

"Event of Default" means any of the following, or any analogous, events:

- the Customer fails to pay any amount due and payable under any Document when the amount is due and payable;
 - the Customer fails to comply with any obligations under any Document;
 - any representation, warranty or statement by the Customer in connection with any Document is untrue or misleading (whether by omission or otherwise); or
 - the Customer becomes subject to Administration;
- "Goods" means any goods supplied by the Supplier to the Customer in accordance with the T&Cs;
- "Personnel" means any employee, servant, contractor, subcontractor, agent, partner, director or officer of a party;
- "PPSA" means Personal Property Securities Act 2009 (Cth);
- "Receiver" means a receiver or receiver and manager (or an additional receiver or receiver and manager);
- "Related Bodies Corporate" has the meaning given to it under the Corporations Act.
- "Security" means a security interest that is subject to the PPSA;

- any other mortgage, pledge, lien or charge; or
- any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in

relation to any property;

"Security Interest" means the Supplier's security under clause 7.1;

"Secured Property" means all present and after-acquired property of the Customer (whether or not the Customer can be the grantor of a security interest under the PPSA in relation to the property);

"Services" means any services supplied by the Supplier to the Customer in accordance with the T&Cs; "Supplier" means Adbri Masonry Pty Ltd (ABN 31 009 687 521);

"Small Business" has the meaning given under the Australian Consumer Law and includes a small business Customer that employs 100 or fewer persons or has an annual turnover of less than \$10 million. If the definition of 'Small Business' under the Australian Consumer Law is amended, this definition is amended accordingly; and

"T&Cs" means the Supplier's terms and conditions of sale as may be amended by the Supplier from time to time.

21) Interpretation

In this Credit Agreement:

- the headings will not affect interpretation;
- the singular includes the plural and vice versa;
- any other grammatical form of a word or expression defined in this Credit Agreement has a corresponding meaning;
- a reference to a document includes the document as novated, altered, supplemented or replaced;
- a reference to a party includes the party's executors, administrators, heirs, successors in title, permitted assigns and substitutes;
- a reference to a person includes a natural person, body corporate, partnership, trust, association or any other entity;
- a reference to a statute, ordinance, code or law includes regulations, rules and other instruments under the statute, ordinance, code or law and any consolidations, amendments, re-enactments or replacements;
- a word or expression defined in the Corporations Act has the meaning given to the word or expression in the Corporations Act;
- the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
- any agreement, representation, warranty or indemnity by two or more parties binds those parties jointly and severally;
- any undertaking by a party not to do any act or thing will be deemed to include an undertaking not to permit or suffer the doing of that act or thing;
- a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Credit Agreement; and
- if a day on or by which an obligation must be performed or an event must occur is not a business day, the obligation must be performed or the event must occur on or by the next business day.

DEED OF GUARANTEE, INDEMNITY AND CHARGE

Executed as an Agreement

Executed for and on behalf of the Customer (by a person who warrants that: (a) they have the authority to execute this Agreement for and on behalf of the Customer; (b) they agree to be personally bound by the terms of clause 18 of the Credit Agreement as if the clause referred to them personally; and (c) that any credit provided to the Customer by the Supplier is to be applied wholly or predominately for commercial and/or investment purposes)

Full Name

Signature

Position

Date

DEED OF GUARANTEE, INDEMNITY AND CHARGE

In consideration of the Supplier agreeing to supply goods and/or services and/or provide credit to the Customer, each Guarantor enters into this Guarantee in favour of the Supplier in the following terms:

- 1) **Request**
Each Guarantor requests the Supplier to supply goods to the Customer in accordance with the Credit Agreement and the T&Cs.
- 2) **Guaranteed Money**
Each Guarantor guarantees to the Supplier the due and punctual payment by the Customer of the Guaranteed Money and the Guaranteed Money will be payable by the Guarantor to the Supplier immediately on demand by the Supplier.
- 3) **Performance**
Each Guarantor unconditionally and irrevocably guarantees the Customer's due and punctual performance of all of the Customer's Obligations.
- 4) **Release and Indemnity**
 - 4.1 Neither the Supplier nor any person appointed by the Supplier under any Document will be liable for any loss that any Guarantor suffers as a direct or indirect result of:
 - (a) the exercise or attempted exercise of, or failure to exercise, any rights under any Document; or
 - (b) any release or dealing with any Security.
 - 4.2 Each Guarantor will indemnify the Supplier, the Supplier's Personnel and each Receiver or any other person appointed by the Supplier in relation to any losses, liabilities, expenses (including but not limited to legal expenses on a full indemnity basis) or taxes incurred in connection with:
 - (a) the exercise or attempted exercise of any powers, rights, discretions or remedies vested in the person under any Document or the Corporations Act; or
 - (b) any proceedings, claims or demands in relation to any secured property.
 - 4.3 Each Guarantor indemnifies the Supplier in relation to any direct and indirect losses, damages or expenses which the Supplier suffers as a result of:
 - (a) the Customer's failure to perform, or delay in performing, any of the Customer's Obligations; and
 - (b) the Guarantor's failure to perform, or delay in performing, any of the Guarantor's obligations under this Guarantee.
- 5) **Expenses**
Each Guarantor must pay the Supplier, on a full indemnity basis as a liquidated debt, the full amount of any bank fees or other expenses associated with any dishonoured payments or cheques and any legal, debt recovery or other expenses associated with any action by the Supplier to exercise any right or remedy under this Guarantee.
- 6) **Continuing Guarantee**
 - 6.1 This Guarantee is a continuing guarantee in respect of all money due to the Supplier at any time and will not be wholly or partially satisfied or discharged by the payment of any money to the Supplier or any other event.
 - 6.2 This Guarantee will not be affected by:
 - (a) any agreed variation to the terms of the Credit Agreement or the T&Cs;
 - (b) any event of insolvency affecting a person or the death of a person;
 - (c) any change in the constitution, membership, or partnership of a person;
 - (d) the partial performance of the Customer's Obligations;
 - (e) any of the Customer's Obligations being invalid or unenforceable at any time;
 - (f) the Supplier refusing any credit to the Customer;
 - (g) the Supplier granting any time or other indulgence or concession to the Customer; or
 - (h) the release of any Guarantor (if there is more than one Guarantor).
 - 6.3 No Guarantor will be released from this Guarantee unless the Guarantor provides a written request for a release to the Supplier and the Supplier provides a written agreement to the release which the Supplier may provide or withhold in the Supplier's absolute discretion.
 - 6.4 The liability of each Guarantor under this Guarantee extends to and is not affected by any circumstance, act or omission which, but for this clause, might otherwise affect the Guarantor at law or in equity including:
 - (a) any failure or omission by the Supplier to complete, register, perfect or take advantage of or enforce the Supplier's Security Interest or any other Security granted or given by the Customer or any guarantor of the Guaranteed Money or the Customer's Obligations, at the date of the execution of this Guarantee or at any time; the obligations of the Customer in respect of the Guaranteed Money or the Customer's Obligations or the obligations of any other guarantor of the Guaranteed Money or Customer's Obligations under this Guarantee or any other agreement relating to the Guaranteed Money or the Customer's Obligations or this Guarantee (including any other guarantee or Security) being or becoming illegal, void, voidable, unenforceable or disclaimed by a liquidator or trustee for creditors or in bankruptcy; or
 - (c) any laches, acquiescence, delay, act, omission or mistake on the part of, or suffered by, the Supplier or any other person, in relation to this Guarantee or any other guarantee, Security or agreement.
- 7) **Enforcement**
The Supplier may enforce this Guarantee without first having to enforce any of the Supplier's rights against the Customer or having resort to any other guarantee or Security in relation to the Customer's Obligations.
- 8) **Principal Obligation**
This Guarantee is a principal obligation and is not ancillary or collateral to any other right or obligation.
- 9) **Independent**
This Guarantee is independent of any other guarantee or Security in relation to the Customer's Obligations.
- 10) **Security Interest**
 - 10.1 To secure the punctual payment of all amounts owed by the Customer and/or the Guarantor to the Supplier, each Guarantor grants to the Supplier:
 - (a) a security interest (as defined under the PPSA) over all present and after-acquired property of the Guarantor in relation to which the Guarantor can be a grantor of a security interest under the PPSA, whether or not the Guarantor has title to the property, including but not limited to all PPSA retention of title property (as defined under section 51F of the Corporations Act); and
 - (b) a fixed charge over all present and after-acquired property of the Guarantor in relation to which the Guarantor cannot be a grantor of a security interest under the PPSA.
 - 10.2 Each Guarantor agrees and acknowledges the Supplier may (without limiting the Supplier's other rights under this Guarantee, at law or otherwise) lodge caveats over the Guarantor's other rights and take any other action to secure and enforce the Supplier's Security Interest.
 - 10.3 The Security Interest will immediately become enforceable (whether or not the Guaranteed Money has become payable) if an Event of Default occurs, without the need for any demand or notice under a Document.
 - 10.4 If the Supplier's security under clause 10.1 has become enforceable, the Supplier may appoint a Receiver to the Secured Property and fix the remuneration of the Receiver or exercise any power exercisable by a Receiver even if a Receiver has not been appointed.
 - 10.5 Each Guarantor agrees on demand, and irrevocably appoints the Supplier, each director and secretary of the Supplier and any Receiver (as independent and several appointments) as the Guarantor's agent and attorney, to execute any document (including, without limitation, any mortgage or transfer) or undertake any act, at the Guarantor's cost, that the Supplier considers necessary or desirable to:
 - (a) better secure the Supplier's Security Interest in a manner consistent with any Document; or
 - (b) assist in the completion, execution of, or exercise of any power under, any Document.
- 11) **Personal Property Securities**
 - 11.1 Funds received by the Supplier or Receiver under or because of any Document may be applied first in payment of all costs and expenses of the Supplier and Receiver (including remuneration) incurred in exercising a power in connection with any Document and then monies owing to the Supplier.
 - 11.2 Each Guarantor:
 - (a) agrees with the Supplier that neither the Guarantor, nor the Supplier, will disclose information of the kind specified in section 275(1) of the PPSA (except in the circumstances required by sections 275(7)(b) to (e) of the PPSA);
 - (b) agrees that, to the extent permitted under section 115(1) of the PPSA, the following provisions of the PPSA do not apply: sections 95, 118, 121(4), 125, 130, 132(3)(d), 135, 138B(4), 142 and 143;

- (c) agrees that, to the extent permitted under section 115(7) of the PPSA, the following sections of the PPSA do not apply: sections 127, 129(2), 129(3), 132, 134(2), 135, 136(5) and 137;
 - (d) acknowledges that the Supplier may, at the Guarantor's cost, register one or more financing statements in relation to the Supplier's Security Interest or any other Security under any Document;
 - (e) waives, if permitted under the PPSA, the Guarantor's right under section 157 of the PPSA to receive notice of any verification statement relating to the registration of any financing statement or any related financing change statement; and
 - (f) will not, without prior written notice to the Supplier, change the Guarantor's name or initiate any change to any documentation registered under the PPSA.
- 12) **Application of Money**
When the Supplier or Receiver receives money under or because of any Document, and applies the money in payment of monies owing to the Supplier, the Supplier or Receiver may apply different parts of the money received to different parts of the monies owing in the absolute discretion of the Supplier or Receiver regardless of any appropriation by the Customer or the Guarantor.
 - 13) **Administration**
Until this Guarantee is released by the Supplier, the Guarantor will not prove in any liquidation, bankruptcy or similar procedure in relation to the Customer in competition with the Supplier.
 - 14) **Voluntary**
Each Guarantor acknowledges that the Guarantor has read and understands this Guarantee, enters into this Guarantee voluntarily and not as a result of any representation of the Supplier or duress of any person.
 - 15) **Legal Advice**
Each Guarantor acknowledges that the Guarantor has had an opportunity to obtain independent legal and financial advice in relation to this Guarantee.
 - 16) **Joint and Several**
If there is more than one Guarantor, each Guarantor will be jointly and severally bound by the terms of this Guarantee.
 - 17) **Information**
Each Guarantor warrants that all the information set out in this Guarantee is true and correct and the Guarantor has disclosed to the Supplier all information relevant to this Guarantee.
 - 18) **Notice**
Each Guarantor must immediately provide written notice to the Supplier if there is any change in the ownership or control of the Guarantor or to the Guarantor's details set out in this Guarantee.
 - 19) **Administration**
If any payment by the Guarantor to the Supplier is avoided as a result of, or the Supplier settles any claim in relation to, any statutory provision arising as a result of any Administration, the payment will be taken not to have been made and the Supplier will be entitled to recover the amount of the payment from the Guarantor.
 - 20) **Privacy**
 - 20.1 The Supplier may, before, during or after the provision of credit to the Customer, give the following information about each Guarantor to a credit reporting agency:
 - (a) identity particulars - name, sex, address (and previous two addresses), date of birth, name of employer, and driver's licence number;
 - (b) the Customer's application for credit - the fact that the Customer has applied for credit and the amount;
 - (c) the fact that the Supplier is a current credit provider to the Customer;
 - (d) payments which are overdue by more than 60 days, and for which debt collection action has started;
 - (e) advice that payments are no longer overdue in respect of any default;
 - (f) information that, in the opinion of the Supplier, the Guarantor has committed a serious credit infringement (that is, acted fraudulently or shown an intention not to comply with credit obligations); or
 - (g) dishonoured cheques - cheques drawn by the Guarantor for \$100 or more which have been dishonoured more than once,for the purpose of obtaining a consumer credit report, and/or allowing the credit reporting agency to create or maintain a credit information file containing information, about the Guarantor or for any related purpose.
 - 20.2 The Supplier may obtain:
 - (a) information about the Guarantor from a business which provides information about the commercial creditworthiness of persons; and
 - (b) a consumer credit report containing information about the Guarantor from a credit reporting agency, for the purpose of assessing whether to accept the Guarantor as a guarantor for credit applied for by, or provided to, the Customer or for any related purpose.
 - 20.3 The Supplier may, but is not obliged to, give a credit report containing information about the Guarantor to any person:
 - (a) who is currently a guarantor; or
 - (b) whom the Customer or the Guarantor have indicated is considering becoming a guarantor, for the purpose of a person deciding whether to act as guarantor and/or keeping a guarantor informed about any guarantee or for any related purpose.
 - 20.4 The Supplier may exchange information about the Guarantor with those credit providers and suppliers (including trade references):
 - (a) named in the Application for Commercial Credit;
 - (b) named in a consumer credit report issued by a credit reporting agency; and
 - (c) of which the Supplier is, or becomes, aware,for the purpose of assessing an application for credit, notifying other credit providers (including trade references) of a default, exchanging information with other credit providers (including trade references) as to the status of credit where the Customer or the Guarantor are in default with other credit providers (including trade references) or assessing the Guarantor's creditworthiness or for any related purpose.
 - 20.5 The information obtained or disclosed about the Guarantor in accordance with this Guarantee may include a credit report and anything about the Guarantor's creditworthiness, credit standing and credit history or any related information.
 - 21) **General**
 - 21.1 This Guarantee binds the Guarantor both personally and as trustee of any trust of which the Guarantor is trustee.
 - 21.2 The Supplier may set off any amounts owed by the Supplier to the Guarantor against any amounts due and payable by the Guarantor to the Supplier whether under this Guarantee or otherwise.
 - 21.3 This Guarantee may only be amended with the Supplier's express written agreement.
 - 21.4 Any waiver of a right by the Supplier must be express and in writing and will not operate as a waiver in relation to any subsequent matter.
 - 21.5 The Supplier's rights arising out of this Guarantee do not exclude any other rights of the Supplier.
 - 21.6 The actions of any person claiming to have the Guarantor's authority will bind the Guarantor to the extent permitted by law.
 - 21.7 If any provision of this Guarantee is unenforceable, the provision will be severed and the remaining provisions will continue to apply.
 - 21.8 The Supplier may assign any rights or benefits under agreement under this Guarantee to any third party.
 - 21.9 The Guarantor may only assign any rights or benefits under any agreement under this Guarantee with the Supplier's prior written consent.
 - 21.10 Time is of the essence in respect of the Guarantor's obligations in this Guarantee.
 - 21.11 This Guarantee will be governed by the laws of, and the parties submit to the jurisdiction of the courts of, the state in which the goods and/or services are delivered to the Customer pursuant to the Terms and Conditions.
 - 22) **Definitions**
In this Guarantee:
"Administration" means any of the following, or any analogous, events:
 - (a) any step is taken to appoint an administrator, receiver, liquidator and manager, trustee, provisional liquidator or liquidator to the Customer or Guarantor or to the whole or any part of the Customer's or Guarantor's assets, operations or business;

DEED OF GUARANTEE, INDEMNITY AND CHARGE

- (b) any person, or agent of a person, who holds any Security takes possession of any of the Customer's or Guarantor's property (including but not limited to seizing the Customer's or Guarantor's property within the meaning of section 123 of the PPSA);
- (c) a court or other authority enforces any judgment or order against the Customer or Guarantor for the payment of money or the recovery of any property;
- (d) the Customer or Guarantor disposes of the whole or any part of the Customer's or Guarantor's assets, operations or business other than in the ordinary course of business;
- (e) the Customer or Guarantor ceases, or threatens to cease, carrying on business;
- (f) the Customer or Guarantor is unable to pay the Customer's or Guarantor's debts as the debts fall due; or
- (g) any step is taken for the Customer or Guarantor to enter into any arrangement or compromise with, or assignment for the benefit of, the Customer's or Guarantor's creditors or any class of the Customer's or Guarantor's creditors.

"Application for Commercial Credit" means the application for commercial credit of which this Guarantee forms part;

"Corporations Act" means the Corporations Act 2001 (Cth);

"Credit Agreement" means the Terms and Conditions of Application for Commercial Credit that form part of the Application for Commercial Credit;

"Customer" means the Customer named in the Application for Commercial Credit of which this Guarantee forms part;

"Customer's Obligations" means the Customer's obligations to the Supplier under the Credit Agreement, the T&Cs or otherwise (including but not limited to the obligation to pay the Guaranteed Money); "Document" means the Application for Commercial Credit, the Credit Agreement, this Guarantee, the T&Cs and any document contemplated by such documents; "Event of Default" means any of the following, or any analogous, events:

- (a) the Guarantor fails to pay any amount due and payable under any Document when the amount is due and payable;
- (b) the Guarantor fails to comply with any obligations under any Document;
- (c) any representation, warranty or statement by the Guarantor in connection with any Document is untrue or misleading (whether by omission or otherwise); or
- (d) the Guarantor becomes subject to Administration;

"Guarantee" means this deed of guarantee, indemnity and charge;

"Guaranteed Money" means all money which is, or may be in future, owed by the Customer to the Supplier for any reason;

"Guarantor" means each person who executes this Guarantee;

"PPSA" means Personal Property Securities Act 2009 (Cth);

"Receiver" means a receiver or receiver and manager (or an additional receiver or receiver and manager); "Secured Property" means all present and after-acquired property of the Guarantor

(whether or not the Guarantor can be the grantor of a security interest under the PPSA in relation to the property);

"Security" means:

- (a) a security interest that is subject to the PPSA;
- (b) any other mortgage, pledge, lien or charge; or
- (c) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property;
- (d) "Security Interest" means the Supplier's security under clause 10.1; "Supplier" means Adbri Masonry Pty Ltd (ABN 31 009 687 521); and
- (e) "T&Cs" means the Supplier's terms and conditions of sale as may be amended by the Supplier from time to time.

23) Interpretation In this Guarantee:

- (a) the headings will not affect interpretation;
- (b) the singular includes the plural and vice versa;
- (c) any other grammatical form of a word or expression defined in this Guarantee has a corresponding meaning;
- (d) a reference to a document includes the document as novated, altered, supplemented or replaced;
- (e) a reference to a party includes the party's executors, administrators, heirs, successors in title, permitted assigns and substitutes;
- (f) a reference to a person includes a natural person, body corporate, partnership, trust, association or any other entity;
- (g) a reference to a statute, ordinance, code or law includes regulations, rules and other instruments under the statute, ordinance, code or law and any consolidations, amendments, re-enactments or replacements;
- (h) a word or expression defined in the Corporations Act has the meaning given to the word or expression in the Corporations Act;
- (i) the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
- (j) any agreement, representation, warranty or indemnity by two or more parties binds those parties jointly and severally;
- (k) any undertaking by a party not to do any act or thing will be deemed to include an undertaking not to permit or suffer the doing of that act or thing;
- (l) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Guarantee; and
- (m) if a day on or by which an obligation must be performed or an event must occur is not a business day, the obligation must be performed or the event must occur on or by the next business day.

EXECUTED AS A DEED

Signed, Sealed and Delivered by Guarantor

Guarantor Full Name	
Previous/OtherName(s)	
Guarantor Address	
State	Postcode
Guarantor Signature	

Witnessed by

Witness Full Name	
Witness Address	
State	Postcode
Witness Signature	
Date	

Signed, Sealed and Delivered by Guarantor

Guarantor Full Name	
Previous/OtherName(s)	
Guarantor Address	
State	Postcode
Guarantor Signature	

Witnessed by

Witness Full Name	
Witness Address	
State	Postcode
Witness Signature	
Date	

Signed, Sealed and Delivered by Guarantor

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Previous/OtherName(s)	
Guarantor Address	
State	Postcode
Guarantor Signature	

Witnessed by

Witness Full Name	
Witness Address	
State	Postcode
Witness Signature	
Date	

Signed, Sealed and Delivered by Guarantor

Guarantor Full Name	
Previous/OtherName(s)	
Guarantor Address	
State	Postcode
Guarantor Signature	

Witnessed by

Witness Full Name	
Witness Address	
State	Postcode
Witness Signature	
Date	

- 1) Application**
- 1.1 These T&Cs apply to any supply of Goods and Services by the Supplier to the Customer and supersede any of the Customer's terms or conditions. All Orders are subject to these T&Cs and the Supplier objects to any additional or different terms which may be contained in any invoice, acknowledgment, purchase order or other forms or correspondence from the Customer or third party.
- 2) Order for Goods / Services**
- 2.1 Any quotation by the Supplier does not constitute an offer to supply.
- 2.2 Unless otherwise stated by the Supplier, any quotation by the Supplier will remain valid for 30 days from the date of the quotation provided that the Supplier may withdraw or vary a quotation at any time prior to the Supplier's acceptance of an Order.
- 2.3 By submitting an Order and/or accepting any Goods and/or Services the Customer agrees to these T&Cs.
- 2.4 No Order by the Customer will be binding on the Supplier unless the Supplier accepts the Order.
- 2.5 If the Supplier accepts an Order, the parties will have created a binding Contract and the Supplier will supply the Goods and/or Services to the Customer, and the Customer will pay the Price to the Supplier in accordance with the terms of the Contract (which will include these T&Cs), but the Contract will be subject to:
- (a) the availability of the materials necessary to supply the Goods; and
- (b) the Customer completing the Supplier's application for commercial credit and the Supplier agreeing to grant credit to the Customer (if the Customer is seeking credit terms).
- 2.6 The Customer must provide the Supplier with all information, instructions, reports, drawings, specifications and properties of Goods and/or Services, and all facts and things relevant to the Goods and/or Services and performance of the Supplier's obligations, at the time the Customer requests any quotation from the Supplier and prior to providing any Order to the Supplier.
- 2.7 If at any time the Supplier considers that any information, document or other thing provided by the Customer to the Supplier is not sufficient to enable the Supplier to supply the Goods and/or Services to the Customer in accordance with the Contract, the Customer must, at the Customer's cost, provide such further information, documents or assistance as is reasonably necessary to perform the obligations under the Order or Contract.
- 2.8 The Customer must ensure the specifications and properties of Goods and/or Services stated in any Order by the Customer will be fit for the intended purpose of the Goods and/or Services.
- 2.9 The Supplier will be entitled to rely on the accuracy of any plans, specifications or other information provided by the Customer.
- 2.10 If there are any errors in any plans, specifications or other information provided by the Customer to the Supplier, the Supplier will, in addition to the Supplier's other rights under these T&Cs or at law, be entitled to vary the Price.
- 2.11 The Customer will be responsible for the quantity of any Goods and/or Services in any Order and the Supplier will not have any liability to the Customer if there is any excess or shortfall of the Goods and/or Services for the intended purpose.
- 2.12 The Supplier may cancel any Order or Contract at any time prior to delivery of the Goods and/or Services with no liability other than to repay any amount of the Price paid in advance of the cancellation.
- 2.13 The Customer may cancel any Order or Contract in accordance with these T&Cs. Where the Customer elects to cancel an Order or terminate a Contract in accordance with these T&Cs, in addition to any accrued rights the Supplier might have, the Customer must pay the Supplier all costs, loss and damage foregone or incurred by reasons of the cancellation or termination including:
- (a) the value of all unpaid Goods supplied in accordance with the T&Cs prior to the date of termination; and
- (b) the cost of Goods manufactured, and materials reasonably ordered by the Supplier prior to the date of termination for the purpose of supplying the Goods; and
- (c) if the Goods are made to order or non-stock items, the full replacement value of those Goods to the extent that the Supplier is not compensated under clauses 2.15(a) and (b) above.
- The Customer is responsible for collecting any Goods at its own expense after the date of termination.
- 3) Price**
- 3.1 Unless otherwise agreed by the Supplier in writing, the Price for an Order will be the price set out in a valid quotation from the Supplier and is subject to variation (whether before or after the acceptance of an Order or before or after the formation of a Contract or during the term of a Contract). The Supplier may give the Customer 5 days prior written notice of a variation to the Price and the revised Price will be effective from the date set out in the notice.
- 3.2 If the Customer is a Consumer or Small Business and unless otherwise agreed by the Customer, the Customer may cancel that part of the Order the subject of a price variation issued under clause 3.1, by written notice to the Supplier within 48 hours of receiving the variation. If the Customer fails to issue a notice of cancellation within time, the Customer is deemed to have accepted the revised Price.
- 3.3 Unless otherwise agreed by the Supplier in writing, the Supplier may invoice the Customer for Goods and/or Services on the date the Supplier supplies the Goods and/or Services.
- 3.4 Unless otherwise stated by the Supplier in writing, the Price is exclusive of any delivery charges and exclusive of GST.
- 3.5 The Customer must not withhold, make deductions from, or set-off, payment of any money owed to the Supplier in connection with these T&Cs.
- 3.6 The Supplier may charge, in addition to the Price, any other reasonable fees, charges and surcharges that the Supplier notifies to the Customer from time to time.
- 4) Delivery of Goods**
- 4.1 If the Supplier agrees to deliver Goods, the Supplier:
- (a) will charge delivery charges, demurrage, waiting time and other charges in the Supplier's price list, or directly incurred by the Supplier or its contractors, or as otherwise agreed by the parties from time to time;
- (b) will endeavour to deliver the Goods to the Delivery Address on the Delivery Date; and
- (c) may charge further delivery charges if the Customer is unable to receive delivery of the Goods at the Delivery Address or on the Delivery Date or in accordance with any other delivery arrangements.
- 4.2 The Supplier will only deliver Goods during the Supplier's usual business hours unless the Supplier agrees otherwise in writing.
- 4.3 The Supplier will not be liable for any delay in the delivery of Goods to the Delivery Address. The Supplier may advise the Customer of a delay in delivery of the Goods at any time prior to the date for delivery. If the Customer is a Consumer or Small Business, unless otherwise agreed by the Customer, the Customer may terminate that part of the Order the subject of the delay by written notice to the Supplier within 48 hours of notice. If the Customer fails to issue a notice within time, or takes delivery of the Goods, the Customer is deemed to have accepted the revised time for delivery.
- 4.4 The Supplier may deliver Goods in separate instalments.
- 4.5 The Customer will ensure a member of the Customer's Personnel will be at the Delivery Address on the Delivery Date to sign the delivery docket on the Customer's behalf.
- 4.6 The Supplier may deliver Goods to the Delivery Address regardless of whether there is anyone at the Delivery Address at the time of delivery.
- 4.7 The Customer agrees:
- (a) the Supplier's responsibility for delivery of Goods will cease at the kerbside or public roadway frontage of the Delivery Address;
- (b) the Customer must provide safe access for delivery of Goods including but not limited to providing safety measures such as traffic control; and
- (c) the Supplier may refuse to deliver Goods, and return the Goods at the Customer's cost, if the Supplier or a member of the Supplier's Personnel considers it would be unsafe to deliver the Goods.
- 4.8 The signature of a member of the Customer's Personnel on the delivery docket will represent the Customer's acknowledgement that the Goods comply with the Contract and these T&Cs.
- 4.9 The Customer must inspect any Goods immediately on collection or delivery of the Goods.
- 5) Risk**
- 5.1 If the Supplier agrees to deliver Goods, the Customer will be deemed to have accepted the Goods, and the risk in the Goods will pass to the Customer, immediately when the Goods are delivered to the Delivery Address regardless of whether there is anyone at the Delivery Address at the time of delivery.
- 5.2 If the Supplier agrees to supply the Goods on an ex-bin or ex-works basis, or the Customer otherwise agrees to collect the Goods, the Customer will be deemed to have accepted the Goods, and the risk in the Goods will pass to the Customer, immediately when the Goods are placed on any vehicle or means of conveyance.
- 6) Title**
- 6.1 The Customer will not receive title to Goods until the Customer makes full payment of the Price and any other amounts payable to the Supplier in accordance with these T&Cs.
- 6.2 Until title in the Goods passes to the Customer in accordance with these T&Cs, the Customer will:
- (a) be only a bailee of the Goods;
- (b) ensure the Goods are kept separate and identifiable from other goods;
- (c) not grant any Security over the Goods to any third party;
- (d) return any Goods to the Supplier immediately on request, so long as the Supplier repays any payments made by the Customer for the Goods which the Customer has not received title to;
- (e) authorise the Supplier or any agent of the Supplier to enter any land and premises owned, occupied or controlled by the Customer where the Goods are located and take possession of the Goods; and
- (f) hold the proceeds from any sale or disposal of the Goods on trust for the Supplier, and the Supplier may repossess, retain, deal with and/or sell the Goods as the Supplier determines in the Supplier's absolute discretion, if the Customer does not pay the Price and any other amounts payable to the Supplier by the due date for payment or the Customer is the subject of Administration so long as the Supplier repays any payments made by the Customer for the Goods the subject of this clause 6.2(f).
- 6.3 The Supplier may, for the purposes of exercising the Supplier's rights under clause 6.2, enter any premises owned, occupied or controlled by the Customer and remove the Goods including but not limited to by detaching or unfixing the Goods from any goods or land to which the Goods are attached or fixed.
- 7) Credit and Personal Property Securities**
- 7.1 The Customer must make full payment of the Price and any other amounts payable to the Supplier before the Supplier supplies Goods and/or Services to the Customer unless the Supplier has granted credit terms to the Customer in which case the Customer must make full payment of the Price and any other amounts payable to the Supplier in accordance with these T&Cs within 30 days after the end of the month in which the Supplier supplied the Goods and/or Services to the Customer (or such alternative period agreed by the Supplier in writing).
- 7.2 If the Supplier grants credit terms to the Customer, then to secure the punctual payment of all amounts owed by the Customer to the Supplier, the Customer grants to the Supplier:
- (a) a security interest (as defined under the PPSA) over all present and after-acquired property of the Customer in relation to which the Customer can be a grantor of a security interest under the PPSA, whether or not the Customer has title to the property, including but not limited to all PPSA retention of title property (as defined under section 51F of the Corporations Act); and
- (b) a fixed charge over all present and after-acquired property of the Customer in relation to which the Customer cannot be a grantor of a security interest under the PPSA.
- 7.3 The Customer agrees and acknowledges the Supplier may (without limiting the Supplier's other rights under these T&Cs, at law or otherwise) lodge caveats over the Customer's property and take any other action to secure and enforce the Supplier's Security Interest.
- 7.4 The Customer must reimburse the Supplier for the full amount of any bank or other fees associated with any dishonoured payments or cheques and any legal, debt recovery or other expenses incurred by the Supplier associated with any action by the Supplier to recover money from the Customer.
- 7.5 The Customer:
- (a) agrees with the Supplier that neither the Customer, nor the Supplier, will disclose information of the kind specified in section 275(1) of the PPSA (except in the circumstances required by sections 275(7)(b) to (e) of the PPSA);
- (b) agrees that, to the extent permitted under section 115(1) of the PPSA, the following provisions of the PPSA do not apply: sections 95, 118, 121(4), 125, 130, 132(3)(d), 135, 138B(4), 142 and 143;
- (c) agrees that, to the extent permitted under section 115(7) of the PPSA, the following sections of the PPSA do not apply: sections 127, 129(2), 129(3), 132, 134(2), 135, 136(5) and 137;
- (d) acknowledges that the Supplier may, at the Customer's cost, register one or more financing statements in relation to the Supplier's Security Interest or any other Security;
- (e) waives, if permitted under the PPSA, the Customer's right under section 157 of the PPSA to receive notice of any verification statement relating to the registration of any financing statement or any related financing change statement; and
- (f) will not, without prior written notice to the Supplier, change the Customer's name or initiate any change to any documentation registered under the PPSA.
- 7.6 The Security Interest will immediately become enforceable (whether or not the amounts owed by the Customer to the Supplier have become payable) if an Event of Default occurs, without the need for any demand or notice under a document, and the Supplier may appoint a Receiver to property the subject of the Security Interest (and fix the Receiver's remuneration) or exercise any power exercisable by a Receiver even if a Receiver has not been appointed.
- 8) Force Majeure**
- No party is liable to the other party for any failure to perform, or delay in performing, its obligations under these T&Cs if the failure or delay is due to any cause beyond that party's reasonable control and if any such failure or delay continues for a period of 14 days, the other party may terminate any affected Contract with immediate effect by giving notice to the affected party. This clause does not apply to any obligation to pay money.
- 9) Confidential Information and Intellectual Property**
- 9.1 The Customer will not use, or disclose, any Confidential Information disclosed to the Customer.
- 9.2 All Intellectual Property Rights in all designs, drawings, technical information and documents created by the Supplier in relation to the Goods and/or Services will remain with the Supplier and will not be assigned to the Customer and no supply of Goods and/or Services to the Customer will grant to the Customer any Intellectual Property Rights in respect of the Goods and/or Services or such designs, drawings, technical information or documents.
- 9.3 If the Supplier supplies any designs, drawings, technical information or documents to the Customer as part of the Goods and/or Services, the Supplier grants the Customer a non-exclusive, non-transferable, right to use the designs, drawings, technical information and documents strictly and only for the purposes of the Customer's use of the Goods and/or Services.

9.4 The Customer warrants that the Supplier's use of any designs, instructions or documents provided by the Customer to the Supplier will not infringe the Intellectual Property Rights of any other party.

10) Approvals

The Customer must, at the Customer's expense, obtain all Approvals necessary for and incidental to the supply of the Goods and/or Services.

11) Security

The Supplier will not be required to provide a bank guarantee or any other form of Security and the Customer will not be entitled to retain any retention money from the Price for any reason.

12) Warranties

12.1 To the extent permitted by law, the Supplier does not warrant the Goods and/or Services are fit for any purpose whether or not made known to the Supplier or any member of the Supplier's Personnel.

12.2 If you are a Consumer, the Supplier acknowledges and agrees that nothing in these T&Cs shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the provision of Goods and/or Services pursuant to these T&Cs or any of the provisions pursuant to the Australian Consumer Law or any relevant State or Federal Legislation which by law cannot be excluded.

12.3 The Supplier excludes all express and implied conditions and warranties in relation to the Goods and/or Services except those conditions or warranties that cannot be excluded by law and the Supplier's liability under any such conditions or warranties is limited to, at the Supplier's option, arranging to replace, repair or refund the Goods and/or the outcome of the Services or resupplying the Goods and/or Services.

12.4 Nothing in these T&Cs are intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer Act 2010 (Cth) or any Fair Trading Act except to the extent permitted by such Acts.

13) Liability

13.1 To the extent permitted by law, the Supplier's Liability in relation to these T&Cs, any Contract, and any supply of Goods and/or Services (whether under statute, contract, tort, or otherwise) will be limited to the amount of the Price paid by the Customer to the Supplier as at the date of the Claim under the Contract that is most proximate to the circumstances giving rise to the Claim.

13.2 To the extent permitted by law, if the Customer is a Consumer or Small Business, then neither party will be liable to the other party for any Liability or Claim of any kind arising directly or indirectly (whether under statute, contract, tort, negligence or otherwise) in relation to any Indirect Damage.

13.3 If the Customer is not a Consumer or Small Business, the Supplier is not liable to the Customer for any Liability or Claim of any kind arising directly or indirectly (whether under statute, contract, tort, negligence or otherwise) in relation to any Indirect Damage.

14) Release and Indemnity

14.1 If the Customer is not a Consumer or Small Business, the Customer indemnifies the Supplier and each member of the Supplier's Personnel from and against any Liability or Claim arising directly or indirectly in relation to:

- the accuracy of all information provided by the Customer to the Supplier in relation to the Services, the Delivery Address or any other matters;
- the Customer's material breach of these T&Cs or any Contract;
- the negligence or wilful misconduct of the Customer or any member of the Customer's Personnel;
- the Supplier or any member of the Supplier's Personnel delivering the Goods in accordance with the Customer's instructions;
- any spillage, breakage or contamination of Goods during any transport or delivery which is caused or contributed to by the Customer or any member of the Customer's Personnel;
- the Customer or any member of the Customer's Personnel causing any delay in the supply of any Goods and/or Services;
- the Supplier having to resupply the Goods and/or Services, or undertake any rework, as a result of the actions or omissions of the Customer or any related third party;
- the Customer or any member of the Customer's Personnel refusing to accept any delivery;
- the Customer or any member of the Customer's Personnel purporting to cancel any Order or Contract without prior agreement between the parties; and
- any proceedings, claims and demands in relation to any secured property the subject of these T&Cs or other Contract.

14.2 The Customer indemnifies the Supplier and each member of the Supplier's Personnel from and against any Liability or Claim arising directly or indirectly in relation to:

- personal injury or loss suffered by the Supplier or any member of the Supplier's Personnel entering the Delivery Address and the loss was caused or contributed to by the Customer; and
- damage to the property of the Customer or any third party during any delivery of Goods which is caused or contributed to by the Customer or any member of the Customer's Personnel.

14.3 The Customer's liability to indemnify the Supplier under these T&Cs is reduced to the extent that such Claims, losses, Liabilities or expenses are caused or contributed to by the Supplier.

15) Termination

15.1 The Customer may terminate these T&Cs by written notice to the Supplier where:

- The Supplier materially breaches these T&Cs and the breach is not capable of remedy or the Supplier does not remedy that breach within 30 days of written notice by the Customer; or
- an Administration occurs in relation to the Supplier and the termination is not prohibited by law.

15.2 The Supplier may immediately terminate, or suspend the performance of, any Contract and the Customer must immediately pay any money owed to the Supplier if:

- the Customer breaches a term of these T&Cs or any Contract and does not remedy the breach within 7 days of receiving a notice from the Supplier requiring the Customer to do so;
- the Customer materially breaches a term of these T&Cs or any Contract which is not capable of remedy;
- there is any change in the Control of the Customer; or
- an Administration occurs arises in relation to the Customer and the termination is not prohibited by law.

16) Definitions in these T&Cs:

"Australian Consumer Law" means the Australian Consumer Law being schedule 2 in the *Competition and Consumer Act 2010* (Cth);

"Administration" means any of the following, or any analogous, events:

- any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator or liquidator to the Customer or to the whole or any part of the Customer's assets, operations or business;
- any person, or agent of a person, who holds any Security takes possession of any of the Customer's property (including but not limited to seizing the Customer's property within the meaning of section 123 of the PPSA);
- a court or other authority enforces any judgment or order against the Customer for the payment of money or the recovery of any property;
- the Customer disposes of the whole or any part of the Customer's assets, operations or business other than in the ordinary course of business;
- the Customer ceases, or threatens to cease, carrying on business;

- the Customer is unable to pay the Customer's debts as the debts fall due; or
- any step is taken for the Customer to enter into any arrangement or compromise with, or
- assignment for the benefit of, the Customer's creditors or any class of the Customer's creditors. "Approvals" means all approvals, authorisations, permits, consents, determinations and licences which are issued, or required to be issued, by any Authority to permit the full and proper performance of the Supplier's obligations under these T&Cs;

"Authority" means any government or governmental, semi-governmental, administrative or judicial body, tribunal, department, commission, authority, agency, minister, statutory corporation, instrumentally or entity;

"Claim" means any actual, contingent, present or future claim, demand, action, suit or proceeding for any Liability, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy of whatever nature and however arising, whether direct or indirect, and whether in contract, tort (including but not limited to negligence) or otherwise;

"Confidential Information" means information, whether in visual, oral, documentary, electronic, machine-readable, tangible, intangible or any other form, relating to the Supplier or any related entity of the Supplier including but not limited to any information relating to any business, products, markets, operations, processes, techniques, technology, forecasts, strategies or any other matter;

"Consumer" has the meaning given under the Australian Consumer Law and includes the supply of goods or services to an individual or business costing up to \$100,000 (or any other amount set by the Australian Consumer Law in future) or goods or services costing more than \$100,000, which are normally used for personal, domestic or household purposes but does not include an individual or business who buys:

- a good in trade or commerce:
 - for the purpose of re-supply;
 - to use them or transform them through processing, production or manufacture;
 - to repair or treat other goods or fixtures on land;

(b) a service in trade or commerce for commercial use.

If the definition of 'Consumer' under the Australian Consumer Law is amended, this definition is amended accordingly.

"Contract" means a contract formed as a result of the acceptance of an Order by the Supplier;

"Control" has the meaning set out in the Corporations Act;

"Corporations Act" means the Corporations Act 2001 (Cth);

"Customer" means the customer set out in any quotation, offer or other document provided by the Supplier (or, in the absence of such information, the customer who placed the Order);

"Customer's Personnel" means and includes the Customer's employees, contractors, consultants, agents or persons under its control;

"Delivery Address" means the address for the delivery of the Goods and/or Services in a Contract;

"Delivery Date" means the date for the delivery of the Goods and/or Services in a Contract;

"Event of Default" means any of the following, or any analogous, events:

- the Customer fails to pay any amount due and payable when the amount is due and payable;
- the Customer fails to comply with any material obligation under any document and if the breach is remediable the Customer has failed to remedy that breach after 14 days' notice;
- any material representation, warranty or statement by the Customer in connection with any document is untrue or misleading (whether by omission or otherwise); or
- the Customer becomes subject to Administration;

"Goods" means the goods in a Contract;

"Indirect Damage" suffered by a party, means: (a) any loss which does not arise naturally or in the ordinary course of things from a breach by a party to this Agreement; (b) any loss or anticipated loss which constitutes or arises from or in connection with (even if such loss arises naturally or in the usual course of things); (i) loss of use, production, revenue, income, business savings, profit or opportunity; (ii) a loss of goodwill; (iii) a loss of business reputation; or (iv) business interruption or increased financing costs or (c) any Liability of the party to any third person, or any Claim, brought against the party by any third person, and any Liability in connection with the Claim.

"Intellectual Property Rights" means any present or future rights conferred by statute, common law or equity in any part of the world in relation to any confidential information, copyright, trade marks, service marks, designs, patents, circuit layouts, plant varieties, business names, domain names, inventions, trade secrets or other results of intellectual activity in any industrial, commercial, scientific, literary or artistic fields;

"Liability" means any loss, liability, cost, payment, damages, debt or expense (including but not limited to reasonable legal fees);

"Order" means any written or verbal order by the Customer to the Supplier for Goods and/or Services; "Personnel" means any employee, servant, contractor, subcontractor, agent, partner, director or officer of a party;

"PPSA" means Personal Property Securities Act 2009 (Cth);

"Price" means the price of the Goods and/or Services as nominated by the Supplier from time to time;

"Related Bodies Corporate" has the same meaning given to it under the Corporations Act.

"Security" means:

- a security interest that is subject to the PPSA;
- any other mortgage, pledge, lien or charge; or
- any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property

"Security Interest" means the Supplier's security under clause 7.2;

"Services" means the services in a Contract and any services associated with the Goods;

"Small Business" has meaning given under the Australian Consumer Law and includes a small business Buyer that employs 100 or fewer persons or has an annual turnover of less than \$10 million. If the definition of 'Small Business' under the Australian Consumer Law is amended, this definition is amended accordingly;

"Supplier" means Adbri Masonry Pty Ltd (ABN 31 009 687 521); and

"T&Cs" means the terms of these Terms and Conditions and the terms of the Special Conditions (and if there is any inconsistency between the terms of these Terms and Conditions and the terms of the Special Conditions, then the terms of the Special Conditions will take precedence).

17) Miscellaneous

17.1 The parties agree:

- no Contract will create any partnership, joint venture, agency or relationship of employment between the parties;
- these T&Cs or any Contract may only be amended by written agreement between the parties or by the Supplier providing no less than 5 days' written notice of the amendments to the Customer (provided that, in the case of amendment by written notice from the Supplier, the amendments are reasonable and will not take effect until the Customer places a new Order after the notice period has expired and the Customer may terminate the agreement within the notice period if the changes cause adverse consequences to the Customer. The amendments will be deemed to have been accepted if no notice of termination is received from the Customer within 48 hours of the Supplier's notice issued under this clause 16.1(b)). Otherwise, a Contract may only be amended by written agreement between the parties;
- any waiver by the Supplier must be express and in writing;
- the Supplier's rights under these T&Cs or any Contract do not exclude any other rights of the Supplier;
- no Contract will be a sale by sample;
- the actions of any person claiming to have the Customer's authority will bind the Customer to the extent permitted by law;

- (g) if any provision of these T&Cs or any Contract is unenforceable, the provision will be severed and the remaining provisions will continue to apply;
- (h) the Customer must immediately provide written notice to the Supplier if there is any change in the Control of the Customer;
- (i) the Supplier may assign any rights or benefits under these T&Cs or any Contract to any Related Bodies Corporate or to a third party credit management organisation or collection agency for the purpose of recovery any unpaid amounts; and
- (j) the Customer may only assign their rights or benefits under these T&Cs or any Contract with the Suppliers prior written consent;
- (k) these T&Cs and any Contract will be governed by the laws of, and the parties submit to the jurisdiction of the courts of, the state in which the Goods and/or Services are delivered.

17.2 In these T&Cs:

- (a) the headings will not affect interpretation;
- (b) the singular includes the plural and vice versa;
- (c) any other grammatical form of a word or expression defined in these T&Cs has a corresponding meaning;
- (d) a reference to a document includes the document as novated, altered, supplemented or replaced;
- (e) a reference to a party includes the party's executors, administrators, heirs, successors in title, permitted assigns and substitutes;
- (f) a reference to a person includes a natural person, body corporate, partnership, trust, association or any other entity;
- (g) a reference to a statute, ordinance, code or law includes regulations, rules and other instruments under the statute, ordinance, code or law and any consolidations, amendments, re-enactments or replacements;
- (h) a word or expression defined in the Corporations Act has the meaning given to the word or expression in the Corporations Act;
- (i) the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
- (j) any agreement, representation, warranty or indemnity by two or more parties binds those parties jointly and severally;
- (k) any undertaking by a party not to do any act or thing will be deemed to include an undertaking not to permit or suffer the doing of that act or thing;
- (l) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of these T&Cs; and
- (m) if a day on or by which an obligation must be performed or an event must occur is not a business day, the obligation must be performed or the event must occur on or by the next business day.

SPECIAL CONDITIONS - MASONRY PRODUCTS

1) Supply of Masonry Products

- 1.1 If the Supplier agrees to supply masonry products to the Customer:
 - (a) the Supplier acknowledges that the manufacture and delivery of Goods could take up to 12 or more weeks from the date the Supplier accepts the Customer's Order; and
 - (b) the Supplier's crane trucks will not lift Goods over fences.
- 1.2 Any return of Goods by the Customer will be at the Supplier's discretion and subject to:
 - (a) the Customer providing full details of the Customer's claim within 14 days of the date of the delivery or collection of the Goods;
 - (b) the Customer making payment of delivery and all other costs associated with the return of the Goods (to the extent permitted by law); and
 - (c) any policies and procedures of the Supplier in relation to the return of Goods.

2) Colour

The Customer acknowledges:

- (a) the raw materials used to manufacture masonry products are natural products and subject to variations;
- (b) masonry products may also contain iron stone which could cause rust stains in finished products; the colour, texture, appearance and quality of masonry products in any brochure, display or other promotional material are indicative only;
- (c) the colour, texture or appearance of masonry products might not match the selections any order;
- (d) masonry products should be viewed before purchase and all required products should be ordered at the same time to reduce the risk of variations;
- (e) masonry products should be installed from pallets in rotation to help ensure even blending;
- (f) the Supplier does not represent, warrant or guarantee that the colour, texture, appearance or quality of concrete masonry products will match the selections in any Order or Contract; and
- (g) the Customer is responsible for checking colour variation in masonry products before installation.

3) Pallets

The Customer acknowledges all pallets remain the property of the Supplier and the Customer will advise the Supplier when the pallets are ready for collection in accordance with any requirements of the Supplier.

4) Silica

The Customer acknowledges that concrete masonry products contain silica and acknowledges that silica is a dangerous good and will obtain advice in relation to the handling of silica.

5) Seconds

- 5.1 The Customer acknowledges that seconds and/or redundant Goods (including but not limited to any Goods that the supplier supplies as seconds) ("Seconds"):
 - (a) are not graded as first quality;
 - (b) may have variations in colours, textures, sizes and shapes and other irregularities; and
 - (c) may be broken, cracked, damaged or defective.
- 5.2 The Customer must thoroughly inspect Seconds prior to purchase to ensure the Customer is satisfied with the nature and condition of the Seconds and to ensure the Seconds meet the Customer's needs and are fit for the intended application.
- 5.3 Except in accordance with any applicable law:
 - (a) The Customer releases the Supplier from any Claim in relation to Seconds and cannot return the Seconds.
 - (b) The Supplier will not provide refunds, replacements or credit in relation to Seconds.

SPECIAL CONDITIONS - DESIGN AND/OR INSTALL OF MASONRY PRODUCTS

6) Design and/or Installation of Masonry Products - Application if the Services include:

- (a) services for the installation of any Goods ("Works"), the provisions of clauses 7 to 17 of these Special Conditions will apply; and/or
- (b) services for the design of any Goods or Works ("Design Services"), the provisions of clauses 7, 8, 9, 10 and 17 of these Special Conditions will apply.

7) Information

In addition to providing the information required under the T&Cs, the Customer must provide the supplier with all geotechnical and survey information relevant to the Goods and/or

Services at the time the Customer requests any quotation from the Supplier and prior to providing any Order to the Supplier.

8) Quantities

The Customer agrees:

- (a) any quantities in any design, drawing or quote by the Supplier will be estimates only;
- (b) the Customer acknowledges the Supplier advises the Customer to engage an independent assessment of quantities;
- (c) it is responsible for ensuring that the Supplier's estimated quantities, as set out in any design, drawings or quotes by the Supplier, will satisfy any project requirements; and
- (d) it will promptly notify the Supplier if there are any changes to any project requirements.

9) Comments

Unless otherwise agreed in writing, the Customer will provide written comments to the Supplier in relation to any drawings or designs submitted by the Supplier to the Customer within 3 days of the date of submission.

10) Warranties

The Customer warrants that:

- (a) the Supplier will be able to provide the Works in an orderly and continuous sequence and does not need to undertake any work in stages;
- (b) the Supplier will have uninterrupted access to the Delivery Address;
- (c) the Delivery Address is suitable for the supply of the Goods and Works;
- (d) all other works on or adjacent to the Delivery Address will be completed before the Supplier commences the Works; and
- (e) the Customer is aware of, and have informed the Supplier of, all information relating to the risks, contingencies and other circumstances relevant to the supply of the Goods and Works to the Delivery Address.

11) Exclusions

11.1 The Price does not include provision for:

- (a) any member of the Supplier's Personnel to work any overtime, holidays or rostered days off;
- (b) resupplying any Goods or Works arising due to the acts or omissions of the Customer or any third party;
- (c) addressing latent conditions at the Delivery Address; or
- (d) addressing any underground conditions at the Delivery Address.

11.2 The Supplier is not responsible for any goods, services or works, or the outcome of any goods, services or works supplied by any third party who is not a member of the Supplier's Personnel.

12) Schedule

- 12.1 Any schedule, timetable, deadline or completion date for the supply of the Goods and Works will be an estimate only.
- 12.2 The Supplier will be entitled to a reasonable extension of time for the performance of any obligations under any Contract in the event of any:

- (a) variation directed by the Customer of the scope of Goods or Works;
- (b) the actual quantity of Goods or Works being greater than the quantity in the design, drawing or quote;
- (c) any cause that was not or could not have been reasonably foreseen by the Supplier;
- (d) change in law, to the extent it impacts the Suppliers provision of Goods and/or Services;
- (e) act or omission of the Customer or any member of the Customer's Personnel that affects the supply of the Goods or Works;
- (f) a material breach of these T&Cs or the Contract by the Customer;
- (g) suspension under these T&Cs;
- (h) delays of any Authority;
- (i) site conditions at the Delivery Address;
- (j) inclement weather; or
- (k) industrial conditions.

12.3 The Customer will pay the Supplier all reasonable costs incurred by the Supplier (which may include, without limitation, additional site establishment, labour, material costs and an allowance for overhead and profit) as a result of any of the causes set out in clause 12.2.

13) Variations

13.1 If the Customer wishes to request a variation to the scope of the Goods or Works, the Customer must provide written notice of the variation to the Supplier setting out all information relevant to the variation and all information reasonably required by the Supplier.

13.2 If the Supplier considers that:

- (a) the quantity or scope of the Goods or Works in the design, drawing or quotation is insufficient; or
- (b) the supply of the Goods and/or Services is affected, obstructed or delayed by any cause set out in clause 12.2, or any cause outside of the reasonable control of the Supplier or any cause within the reasonable control of the Customer, the Supplier may provide written notice of a variation to the Customer.

13.3 If a party provides notice of a variation in accordance with clauses 13.1 or 13.2, the Supplier:

- (a) may suspend the supply of the Goods or Works; and
- (b) will notify the Customer whether or not the Supplier can effect the variation and, if the Supplier can effect the variation, the additional Price for the Supplier to effect the variation (which may include, without limitation, additional site establishment, labour, material costs and an allowance for overhead and profit).

13.4 If the Supplier provides a notice to the Customer in accordance with clause 13.3, the Customer must, within 3 days of receipt of the notice, provide written notice to the Supplier stating whether or not the Customer wishes the Supplier to proceed with the requested variation.

13.5 If the Supplier provides notice to the Customer that the Supplier cannot effect a variation, or the Customer does not provide notice in accordance with clause 13.4 stating that the Customer wishes the Supplier to proceed with a variation, the Supplier may:

- (a) complete the supply of the Goods and/or Works in accordance with the Contract and the Customer must pay the Supplier the Price for the Goods and/or Works in accordance with the Contract;
- (b) suspend the supply of the Goods and/or Works and the Customer must pay the Supplier the Price for the Goods and/or Works supplied or manufactured by the Supplier prior to the suspension of the Contract; or
- (c) terminate the Contract by written notice to the Customer and the Customer must pay the Supplier the Price for the Goods and/or Works supplied or manufactured by the Supplier prior to the termination of the Contract.

14) Setting Out

The Customer will, at the Customer's expense, supply the information, data and survey marks to enable the Supplier to set out the Works.

15) Care of the Goods and/or Services

The Customer will be responsible for the care of the Goods and the Works at the Delivery Address.

16) Testing

The Customer will pay any costs associated with opening up for inspection any part of the Goods and/or Works for inspection or testing unless the Customer proves that the Supplier has caused the need for such actions as a result of the Supplier's breach of these T&Cs.

17) Payment for Design and/or Installation Services

The Customer must make full payment of the Price for any Design Services and Works and any other amounts payable to the Supplier before the Supplier supplies such Design Services or Works to the Customer unless the Supplier has granted credit terms to the Customer in which case, unless otherwise agreed in writing:

- (a) the Supplier will invoice the Customer for such Design Services or Works at the conclusion of each 30 day period after the commencement of the Design Services or Works and on the completion of the Design Services or Works; and
- (b) the Customer will pay the Supplier's invoices for such Design Services or Works within 30 days of the date of such invoices.

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